

By: Toth

H.B. No. 1076

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to certain firearms, firearm accessories and firearm  
3 ammunition within the State of Texas; providing an exemption from  
4 federal regulation and providing penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. The Legislature of the State of Texas finds that:

7 (1) The Tenth Amendment to the United States  
8 Constitution reserves to the states and the people all powers not  
9 granted to the federal government elsewhere in the constitution, as  
10 those powers were understood at the time Texas was admitted to  
11 statehood in 1845. The guaranty of those powers is a matter of  
12 contract between the state and people of Texas and the United States  
13 dating from the time Texas became a state.

14 (2) The Ninth Amendment to the United States  
15 Constitution guarantees to the people rights not enumerated in the  
16 constitution, as those rights were understood at the time Texas  
17 became a state. The guaranty of those rights is a matter of  
18 contract between the state and people of Texas and the United States  
19 dating from the time Texas became a state.

20 (3) The Second Amendment to the United States  
21 Constitution guarantees the right of the people to keep and bear  
22 arms, as that right was understood at the time Texas became a state.  
23 The guaranty of that right is a matter of contract between the state  
24 and people of Texas and the United States dating from the time Texas

1 became a state.

2 (4) Section 23, Article I, Texas Constitution, secures  
3 to Texas citizens the right to keep and bear arms. That  
4 constitutional protection is unchanged from the date the  
5 constitution was adopted in 1876.

6 SECTION 2. The Penal Code is amended by adding Chapter 40 to  
7 read as follows:

8 Chapter 40. The Texas Firearm Protection Act

9 Sec. 40.01. This chapter may be cited as the Texas Firearm  
10 Protection Act.

11 Sec. 40.02. Definitions. In this chapter:

12 (1) "Firearm" has the meaning assigned by Section  
13 46.01.

14 (2) "Firearm accessory" means an item that is used in  
15 conjunction with or mounted on a firearm but is not essential to the  
16 basic function of a firearm. The term includes a detachable firearm  
17 magazine.

18 Sec. 40.03. STATE AND LOCAL GOVERNMENT POLICY REGARDING  
19 ENFORCEMENT OF FEDERAL FIREARM LAWS. (a) This section applies to:

20 (1) the State of Texas, including an agency,  
21 department, commission, bureau, board, office, council, court or  
22 other entity that is in any branch of state government and that is  
23 created by the Constitution or a statute of this state, including a  
24 university system or a system of higher education;

25 (2) the governing body of a municipality, county, or  
26 special district or authority;

27 (3) an officer, employee, or other body that is part of

1 a municipality, county, or special district or authority, including  
2 a sheriff, municipal police department, municipal attorney, or  
3 county attorney; and

4 (4) a district attorney or criminal district attorney.

5 (b) An entity described by Subsection (a) may not adopt a  
6 rule, order, ordinance, or policy under which the entity enforces,  
7 or by consistent action allows the enforcement of, a federal  
8 statute, order, rule or regulation enacted on or after January 1,  
9 2013 that purports to regulate a firearm, firearm accessory, or  
10 firearm ammunition if the statute, order, rule or regulation  
11 imposes a prohibition, restriction or other regulation, such as  
12 capacity or size limitation, a registration requirement or a  
13 background check, that does not exist under the laws of this state.

14 (c) No entity described by Subsection (a) and no person  
15 employed by or otherwise under the direction or control of the  
16 entity may enforce or attempt to enforce any federal statute,  
17 order, rule or regulation described by Subsection (b).

18 (d) An entity described by Subsection (a) may not receive  
19 state grant funds if the entity adopts a rule, order, ordinance, or  
20 policy under which the entity enforces any federal laws described  
21 by Subsection (b) or, by consistent actions, allows the enforcement  
22 of any federal laws described by Subsection (b). State grant funds  
23 for the entity shall be denied for the fiscal year following the  
24 year in which a final judicial determination in an action brought  
25 under this section is made that the entity has violated Subsection  
26 (b).

27 (e) Any citizen residing in the jurisdiction of an entity

1 described by Subsection (a) may file a complaint with the attorney  
2 general if the citizen offers evidence to support an allegation  
3 that the entity has adopted a rule, order, ordinance, or policy  
4 under which the entity enforces the federal laws described by  
5 Subsection (b) or that the entity, by consistent actions, allows  
6 the enforcement of any laws described by Subsection (b). The  
7 citizen must include with the complaint the evidence the citizen  
8 had that supports the complaint.

9 (f) If the attorney general determines that a complaint  
10 filed under Subsection (e) against an entity described by  
11 Subsection (a) is valid, the attorney general may file a petition  
12 for a writ of mandamus or apply for other appropriate equitable  
13 relief in a district court in Travis County or in a county in which  
14 the principal office of an entity described by Subsection (a) is  
15 located to compel the entity that adopts a rule, order, ordinance,  
16 or policy under which the local entity enforces the laws described  
17 by Subsection (b) or that, by consistent actions, allows the  
18 enforcement of the laws described by Subsection (b), to comply with  
19 this Section. The attorney general may recover reasonable expenses  
20 incurred in obtaining relief under this subsection, including court  
21 costs, reasonable attorney's fees, investigative costs, witness  
22 fees, and deposition costs.

23 (g) An appeal of a suit brought under Subsection (f) is  
24 governed by the procedures for accelerated appeals in civil cases  
25 under the Texas Rules of Appellate Procedure. The appellate court  
26 shall render its final order or judgment with the least possible  
27 delay.

1       (h) A person commits an offense if, in the person's official  
2 capacity as an officer of an entity described by Subsection (a), or  
3 as a person employed by or otherwise under the direction or control  
4 of the entity, or under color of law, knowingly enforces or attempts  
5 to enforce any federal statute, order, rule or regulation described  
6 by Subsection (b). An offense under this Subsection is a Class A  
7 Misdemeanor.

8       SECTION 3. This Act takes effect immediately if it receives  
9 a vote of two-thirds of all the members elected to each house, as  
10 provided by Section 39, Article III, Texas Constitution. If this  
11 Act does not receive the vote necessary for immediate effect, this  
12 Act shall take effect September 1, 2013.